PS LA 1998/1 - Law Administration Practice Statements

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PS LA 1998/1
Law Administration Practice Statements

This Law Administration Practice Statement explains the system of Law Administration Practice Statements.

This practice statement is an internal ATO document, and is an instruction to ATO staff.

If taxpayers rely on this practice statement, they will be protected from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty. Nor will they have to pay interest on the underpayment provided they reasonably relied on this practice statement in good faith. However, even if they don't have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

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1. Why do we have Law Administration Practice Statements?

Law Administration Practice Statements (LAPS) are corporate policy documents, which provide instructions to ATO staff on the way they should perform certain duties involving the application of the laws administered by the Commissioner – usually referred to as 'technical' work.

Policy for the performance of technical work should be issued in the form of LAPS. Office minutes and other communications shouldn't be used for this purpose, except as an interim measure whilst a LAPS is being developed.

2. What are LAPS?

The following provide the basic principles behind LAPS:

- The primary purpose of a LAPS is to provide instruction to staff. Although technical issues may be discussed in LAPS, this should only be to the extent required to give sense to the instruction. LAPS are not intended to provide interpretative advice.
- LAPS do not express a precedential ATO view.
- Although the primary audience for a LAPS is ATO staff, in the interest of open tax administration, they are published externally.

A taxpayer who relies on particular LAPS will remain liable for any tax shortfall if those LAPS are incorrect, or are misleading and the taxpayer makes a mistake as a result. However, they will be protected against any shortfall penalty that would otherwise arise. In addition, they will be protected against interest charges on the shortfall if the particular LAPS were reasonably relied on in good faith.[1]

3. What are your responsibilities in relation to LAPS?

You must be aware of and follow LAPS relevant to the task you are performing.

When developing guidelines, work instructions or other tools to support policy outlined in a LAPS, you are to ensure that the underlying intent of the LAPS is maintained, and you must include a link and a reference to the LAPS.

If you think that the application of a particular LAPS has an unintended consequence, or that the particular LAPS is incorrect, you must escalate the matter using your business line escalation process.

4. What are the types of LAPS?

There are two series of LAPS – the standard series (such as this one) and the general administration series.

General administration LAPS are identified by a (GA) after their number. These LAPS outline an exercise of the Commissioner's powers of general administration (which are set out in the various Acts administered by the Commissioner)[2], and provide practical compliance solutions in situations where a strict interpretation of the law may be unsatisfactory.

Note: we no longer prepare GA LAPS. If necessary, you should discuss an alternative advice and guidance product (such as a practical compliance guideline) with your BSL PAG Unit.

5. Who maintains a LAPS?

LAPS are 'owned' by a business line, and it is the responsibility of that business line to maintain the currency of that LAPS.

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[1] See Law Administration Practice Statement PS LA 2008/3 *Provision of advice and guidance by the ATO*.

[2] For example, section 8-1 of the *Income Tax Assessment Act 1997.*

6. How is a LAPS developed?

The procedures for developing a LAPS are outlined in the *Public advice and guidance manual*. You should follow these procedures when creating a LAPS.

7. More information

For more information:

- Visit the LAPS myATO site (link available internally only)
- View the Public advice and guidance manual (link available internally only)
- View LAPS on ATOlaw (internal) or Legal Database (external)
- Commissioner's powers of general administration (link available internally only)
- Email the Law Publishing and Policy team in Tax Counsel Network

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